

Andrew H. Griffin, III, (State Bar Number 108378)
Law Offices of **ANDREW H. GRIFFIN, III**
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Attorney for Debtor and Debtor in Possession,
RBE, a California Corporation

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In Re:	)	Case No.: 14-03531-MM11
	)	Chapter 11
RBE, a California Corporation,)	
	)	RESPONSE IN SUPPORT OF SECOND
Debtor and Debtor in Possession.	)	AND FINAL FEE APPLICATION FOR
	)	COMPENSATION AND
	)	REIMBURSEMENT OF EXPENSES
	)	FOR ANDREW GRIFFIN, ATTORNEY
	)	FOR DEBTOR
)	
	)	Date: January 29, 2015
	)	Time: 2:00 pm
	)	Dept.: 1
)	
	)	Judge: Honorable Margaret M. Mann

I, Andrew H. Griffin, III, declare:

1. I represented RBE, the above captioned Debtor, and have been an attorney duly admitted to practice before all courts of the State of California as well as all of the Federal District Courts in the State of California including the Southern District of California for almost thirty-two (32) years.

2. I make this response pursuant to the Court's amended Tentative Ruling entered on January 21, 2015. My concern is not so much regarding the amount of any fee award but more so on the perception of my conduct. The Law Offices of Andrew H. Griffin, III received a prepetition

1 retainer of \$6,213.00 despite the requested \$26,213.00 retainer. Exigent circumstances caused the
2 filing without a full retainer payment. The full \$5,000.00 retainer was used prepetition and the
3 MOR's will support that I have been paid nothing on the first fee application and it is unlikely that I
4 will be paid on any amount awarded on the Second and Final Fee application currently pending
5 before the court.
6

7 3. My response is less concerned about the amount of the fee award and more focused upon
8 the Court's perception. I am troubled by the Court's perception that "numerous misstatements of fact
9 made to the Court from the inception of the case regarding the value of the accounts receivable and
10 viability of the Debtor's operations" were promulgated by me or my office. I spent many
11 uncompensated hours in this case performing due diligence. This case was front loaded with
12 contested motions by an active secured Creditor at a difficult time in my life. I am sure that the Court
13 will recall that there was a contested evidentiary hearing on the Use of Cash Collateral just days
14 before my Mother's funeral.
15

16 4. The record is clear regarding the inadequacy of the Debtor's accounting records and the
17 internal problems with an employee's embezzlement of funds. The Debtor's records were in
18 complete disarray. As the counsel for the Debtor, I assisted with the employment of accountant.
19 After her employment, she spent a full weekend in the Debtor's office attempting to reconcile the
20 accounting records. The employment of the accountant revealed numerous problems, which, as
21 counsel for the Debtor, I was charged to explore, identify and report. My office did not cause the
22 accounting problems. We caused the issues to be clarified and reported the analysis to the office of
23 the U.S. Trustee.
24
25

26 5. I had numerous personal meetings and telephonic communications with the analyst in the
27 office of the US Trustee providing financial documentation and accounting records. Every meeting
28

1 resulted in additional documentation to be completed and submitted by the Debtor.

2 6. I had numerous meetings with counsel for Debtor who had been working on the
3 “Disputed” Construction Claims. I am not an attorney who specializes in Construction claims. The
4 docket will reflect that a motion to employ counsel to allow these claims to be liquidated for the
5 estate was filed. The application to employ counsel was denied due to the objection of Vibra Bank.
6

7 7. The record is also clear that the Debtor had ongoing valuable contracts in substantial
8 amounts. The monthly operation reports reported deposits of hundreds of thousands of dollars. On
9 January 20, 2014, Richard Kipperman, the Chapter 7 Trustee, filed a statement of receipts and
10 disbursements revealing that even after the case was converted to a Chapter 7, the Trustee disbursed
11 \$269,225.85. It is clear that the business, as an ongoing concern, was producing income even while
12 in a Chapter 7 Bankruptcy Petition. The Court’s concerns about the “viability of the Debtor’s
13 operations” is valid but the Chapter 7 Trustee, experienced in the construction industry, opined that
14 the unsecured creditors would be better off with the debtor outside of Chapter 7 and urged me to file
15 a motion to dismiss. I complied with his request and filed the successful motion knowing that I
16 would not receive any compensation for my legal services and expenses.
17
18

19 8. I have no doubt that my assistance in this case has been a benefit to the estate. Some of the
20 benefits include:

21 a) The filing of the Bankruptcy Petition which immediately lifted the suspension of the
22 California State Contractor’s license which allowed the Debtor to operate its construction business.
23 As a result, more than 40 employees continued their employment;
24

25 b) The secured creditor, Vibra Bank, which had not been receiving payments, began
26 receiving adequate protection payments;

27 c) The Debtor was able to enter into contracts post petition, which allowed it to settle debts
28

1 with unsecured creditors. The uncompensated post conversion work, including the motion to
2 dismiss, (which is not covered in the fee application) allowed unsecured creditors to reach
3 agreements and retain its Contractor's license post dismissal.

4
5 9. The Court does not list the "troubling misstatements of fact" that it refers to in the tentative
6 ruling. I understand that there was an issue regarding the "contingent disputed claims" that the Court
7 used as a basis for an order on the order on Cash Collateral. There was ample live testimony on the
8 "contingent disputed claims" provided by the Debtor's principal in the evidentiary hearing. The only
9 information that I had regarding these claims is what I received from the Debtor and claims counsel
10 that was handling the case before the Bankruptcy petition was filed. The same information that I
11 was provided was the evidence that was presented at the hearing. I was not "a passive observer,
12 silently sitting by in the face of a client's legally unacceptable decision". I continued my due
13 diligence even after the hearing on the Use of Cash Collateral.

14
15 10. The docket reflects monthly operating reports that were amended because the financial
16 information that was amended to give the court an accurate picture of the Debtor's financial
17 condition. The docket activity strongly suggests that I did more than close my "eyes to the matters
18 that may have an adverse legal consequence to the estate". I was an active participant in responding
19 to the requests of the office of the U.S Trustee, the Court and Secured Creditor.

20
21 11. I relied upon the Debtor, the Debtor's Claims Construction Counsel and an accountant to
22 guide me in this case. I was affected not only personally and financially but now it appears by the
23 Court's tentative ruling, professionally.

24
25 12. Professionally, I am concerned by the tentative ruling because I have future appearances
26 before this court. Personally, I am concerned about the Court's tentative ruling because every
27 Sunday, I stand before a congregation of people urging them to conduct themselves in a God fearing,
28


1 ethical fashion. Now, I find that my own conduct is being questioned when I have worked selflessly
2 for the bankruptcy estate. Surely, there is something that I have to correct if I am exhibiting false
3 signals.

4 13. I will accept, without any objection, if the Court decides to reduce the amount of
5 compensation. A vigorous objection would be lodged if the Court were making a finding that I have
6 failed to conduct myself in a manner inconsistent with my fiduciary duties.
7

8 I declare under penalty of perjury under the laws of the United States of America that the
9 foregoing is true and correct.

10 Executed on January 22, 2015, at El Cajon, California.

11
12 **Law Offices of Andrew H. Griffin, III**

13 /s/ Andrew H. Griffin, III 
14 Andrew H. Griffin, III, Esq.
15 Attorney for Debtor and Debtor in Possession,
16 RBE, a California Corporation
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Attorney for Debtor,
RBE, a California Corporation

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In Re:	)	Case No.: 14-03531-MM7
)	
RBE, a California Corporation,	)	Chapter 7
)	
Debtor.)	CERTIFICATE OF SERVICE VIA U.S. FIRST CLASS MAIL

CERTIFICATE OF SERVICE VIA U.S. FIRST CLASS MAIL

I, **MERCEDES HERNANDEZ** declare that I am, and was at the time of service of the papers herein referred to over the age of eighteen years and not a party to the action; and I am employed in the County of San Diego, California, within which county the subject mailing occurred. My business address is 275 E. Douglas Avenue, Suite 112, El Cajon, California 92020. I served the following document(s):

**RESPONSE IN SUPPORT OF SECOND AND FINAL FEE APPLICATION FOR
COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR ANDREW GRIFFIN,
ATTORNEY FOR DEBTOR**

X (U.S. First Class Mail) by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

All Access Equipment Rentals
3364 Helix Street
Spring Valley, CA 91977

America Express
P.O. Box 981537
El Paso, TX 79998

1 American Home Assurance Co.
2 Jason R. Goldy Authorize Representative
3 175 Water Street, 15th Floor
4 New York, NY 10038

5 Ana M. Hanson
6 c/o Rothner Segal & Greenstone
7 510 S. Marengo Avenue
8 Pasadena, CA 91101-3115

9 Atlantic Concrete Washout
10 8507 NW 74th Street
11 Miami, FL 33166

12 Bank of America
13 P.O. Box 982235
14 El Paso, TX 79998

15 Carboline Co.
16 2150 Schuetz Road
17 Saint Louis, MO 63146

18 Chase
19 P.O. Box 15298
20 Wilmington, DE 19850

21 Chase
22 P.O. Box 15919
23 Wilmington, DE 19850-5919

24 Emil Ballman
25 8167 Sterling Drive
26 El Cajon, CA 92021

27 Employment Development Dept
28 P.O. Box 826806
Sacramento, CA 94206-0001

Employment Development Dept.
Bankruptcy Group MIC 92E
P.O. BOX 826880
Sacramento, CA 94280-0001

1 Bankruptcy Section MS A340
2 Franchise Tax Board
3 P.O. Box 2952
4 Sacramento, CA 95812-2952

5 Frazee Paint
6 1154 E. Main Street #108
7 El Cajon, CA 92021

8 Gary J. Meyers, Esq.
9 c/o Rothner Segall & Greenston
10 510 S. Marengo Avenue
11 Pasadena, CA 91101-3115

12 Internal Revenue Service
13 P.O. Box 7317
14 Philadelphia, PA 19101-7317

15 Michele S. Ancheta, Esq.
16 Rothner Segal & Greenstone LLP
17 510 S. Marengo Avenue
18 Pasadena, CA 91101-3115

19 G6 Hospitality, LLC
20 ESP Receivables Management
21 399 Asbury Drive
22 Mandeville, LA 70471

23 Motel 6
24 550 Montrose Court
25 El Cajon, CA 92020

26 Rosner Brown Touchstone & Kell
27 4909 Murphy Canyon Road
28 San Diego, CA 92123

1 Small Business Administration
2 550 W. C Street #550
3 San Diego, CA 92101

4 Terrance J. Rusnak
5 1550 Chiswick Court
6 El Cajon, CA 92020

7 Thomas W. Meads
8 1620 Alpine Blvd #228
9 Alpine, CA 91901

10 Vibra Bank
11 530 Broadway
12 Chula Vista, CA 91910

13 Vibra Bank
14 ATTN: Gail Jensen-Bigknife EVP
15 530 Broadway
16 Chula Vista, CA 91910

17 Vista Paint Corporation
18 2020 E. Orangethorpe Avenue
19 Fullerton, CA 92831

20 International Painters and Allied Trades Industry Pension Fund
21 Penn Mutual Towers, 16th Floor
22 510 Walnut Street
23 Philadelphia, PA 19106

24 Jennings Sigmond, P.C.
25 Dawn M. Costa, Esq.
26 510 Walnut Street, 16th Floor
27 Philadelphia, PA 19106

28 George C. Lazar, Esq.
FOX JOHNS LAZAR PEKIN & WEXLER, APC
525 "B" Street, Suite 1500
San Diego, CA 92101

RBE, a California Corporation
10765 Woodside Avenue, Suite E
Santee, CA 92071

1 David A. Ortiz
2 Office of The United States Trustee
3 402 West Broadway, Suite 600
4 San Diego, California 92101-8511

5 Richard M. Kipperman, Chapter 7 Trustee
6 P.O. Box 3010
7 La Mesa, CA 91944-3010

8 I then sealed each envelope and, with the postage for U.S. First Class Mail thereon fully prepaid,
9 deposited each in the United States mail at El Cajon, California, on January 22, 2015.

10 I declare under the penalty of perjury according to the laws of the United States of America that the
11 foregoing is true and correct and that this declaration was executed on January 22, 2015, in the
12 County of San Diego, State of California.

13 /s/ Mercedes Hernandez

14 Mercedes Hernandez

